

UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF FLORIDA  
ORLANDO DIVISION

In re:

Case No. 6:14-bk-08355-ABB

Gilbert Desrosiers,

Chapter 13

Debtor.

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**BANK OF AMERICA, N.A.'S MOTION TO VACATE  
MORTGAGE MODIFICATION MEDIATION ORDER (D.E. 58)**

Bank of America, N.A, its successors and/or assigns ("Secured Creditor"), by and through undersigned counsel, and files this Motion to Vacate Mortgage Modification Mediation Order (D.E. 58) and in support thereof states:

1. Debtor's Bankruptcy Case: This case was commenced by the filing of a voluntary Chapter 11 petition on July 23, 2014 (the "Petition Date") by Gilbert Desrosiers (the "Debtor").

2. Collateral: Secured Creditor holds a mortgage lien for the real property located at 900 Southeast 2<sup>nd</sup> Avenue, Delray Beach, Florida 33483 (the "Property").

3. Debtor's Plan: On September 29, 2014, the Debtor filed a Chapter 13 Plan (D.E. 17). The Plan paid the secured creditor \$500.00 in month 60 of the Plan. On January 21, 2015, the Debtor filed an Amended Chapter 13 Plan (D.E. 48) paying the secured creditor \$682.00 months 1-36 of the plan.

4. Secured Creditor's Claim : On October 30, 2014, the Secured Creditor filed a proof of claim (Claim 1) in the amount of \$333,351.47 with \$123,765.54 in arrearage. The debtor's regular monthly payment was \$1,676.77 (\$1,066.67 principal and interest and \$610.10 escrow). The Secured Creditor files a notice of payment change on April 22, 2015, the Debtor's monthly payment as of June 1, 2015 is \$1,488.32 (\$1,066.67 principal and interest and \$421.65 escrow).

5. Debtor's Schedules: Per the Debtor's Scheduled I filed on August 7, 2014 (D.E. 10), the Debtor is unemployed and has \$0.00 income.

6. Prior Filings: The Debtor has been on default on this loan since 2009. This is the Debtor's Fourth Bankruptcy filing since defaulting on this loan. The first filing was case number 12-01836-ABB, Chapter 13 filed February 14, 2012 and dismissed on April 16, 2012 for failure to file information. The second filing was case number 13-12146-ABB, Chapter 13 filed on September 30, 2013 and dismissed on October 16, 2013 for failure to file information. The third filing was case number 14-00180-ABB, Chapter 13 filed on January 7, 2014 and dismissed on January 24, 2014 for failure to file information. This, the fourth bankruptcy filing was filed 6 months later on July 23, 2014.

7. Mediation Order and Motion: On January 21, 2015, the Debtor filed a Motion for Referral to Mortgage Modification Mediation with the Secured Creditor (D.E. 49). On January 23, 2015, an Order was entered by the Court Abating the Motion (D.E. 55) due to the motion not containing the last four digits of the loan number. On January 25, 2015, the Debtor filed an Amended a Motion for Referral to Mortgage Modification Mediation with the Secured Creditor (D.E. 56). On January 26, 2015, the Court entered an Order Granting the Debtor's Amended a Motion for Referral to Mortgage Modification Mediation with the Secured Creditor (D.E. 58).

8. Debtor in Violation of Mediation Order: The Order required the Debtor to register in the Portal and pay Portal fee. Almost 5 months after the Order has been entered the Debtor still has not opened the process up in the Portal. The Order required to the Debtor to upload documents in the portal. Almost 5 months after the Order has been entered the Debtor still has not uploaded the documents into the Portal. The Order required that mediation be scheduled within 28 days of the Order being entered. Almost 5 months after the Order has been entered the Debtor still has not

scheduled mediation. The Debtor has done nothing to comply with the Court's Order.

9. Attorney's Fees: Secured Creditor has incurred additional fees because of the Debtor's failure to comply with the Order. Secured Creditor requests that the attorneys' fees and costs are recoverable.

10. Motion: Secured Creditor reserves the right to supplement and/or amend this motion.

11. Relief Requested: Secured Creditor requests that the Court entered an Order vacating the Mortgage Modification Mediation Order entered on January 26, 2015 (D.E. 58) and dismiss the Debtor's Chapter 13 Case with a 2 year injunction against refiling.

WHEREFORE, the Secured Creditor requests that the Court enter an Order vacating the Mortgage Modification Mediation Order entered on January 26, 2015 (D.E. 58) and dismiss the Debtor's Chapter 13 Case with a 2 year injunction against refiling, and for such other and further relief as the Court deems just and proper.

MCCALLA RAYMER, LLC

By: /s/ Cynthia M Talton

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**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing was served on June 9, 2015 to all parties on the list to receive e-mail notice/service for this case, via the Notice of Electronic Filing (which is incorporated herein by reference), and via U.S. Mail to Gilbert Desrosiers, P.O. Box 272508, Boca Raton, Florida 33427.

By: /s/ Cynthia M Talton  
Cynthia M Talton